

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2749 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

SHASHIKANT V BHATT

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Appearance:

MR Hardik Raval for Petitioner

MR KK SHAH for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/07/1999

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution of India the Gujarat State Road Transport Corporation has challenged the award dated 24.9.1986 passed by the Labour Court, Bhavnagar, by which the Labour Court directed the petitioner - corporation to reinstate the respondent-workman, a bus conductor, in service in the original post and with continuity of service and with full back wages and with a further direction for paying Rs.100 by way of costs.

2 On 19.2.1984 a bus belonging to the petitioner-corporation was taken on contract for a marriage party. The bus was plying from Bhavnagar to Khandadhana, when a checking party found that there were 51 more passengers in the bus than permitted. The party which had taken the bus on hire and the respondent stated that while coming from Bhavnagar to Khandadhana the bus was accompanied by a motor car and truck and since because of mechanical defect the truck could not be plied, members of the party travelling in the truck had to be carried in the bus with the result that over and above the permitted passengers, 51 passengers more were required to be carried from Bhavnagar to Khandadhana; the amount of fare required to be recovered from 51 passengers along with sur charge and reservation fee worked out to Rs.1600 and, therefore, the respodnent-conductor prepared kachha receipt for Rs.1600 but the members of the marriage party did not have Rs.1600 and since they had only Rs.1,000, the amount of Rs.1,000 was handed over to the petitioner; the petitioner therefore could not issue the receipt which was already prepared by him for Rs.1600. However, after returning to Bhavnagar the amount of Rs.1,600 was deposited with the S.T. Office.

3 The respondent - conductor was charge sheeted in the departmental inquiry for the charge of misappropriation by taking Rs.1,000 from the marriage party and not issuing receipt. The disciplinary authority found the respondent-conductor guilty of the charge levelled against him and passed the order dated 31.5.1985 dismissing the petitioner from service. Respondent-conductor raised an industrial dispute. After considering the material on record and after hearing the learned counsel for the parties the Labour Court passed the impugned award dated 24.9.1998 holding that the charge levelled against the petitioner was not proved and directing the petitioner-corporation to reinstate the petitioner in service with continuity of service and full back wages.

4. The Corporation reinstated the respondent in service and then filed the present. This Court granted ex-parte ad-interim stay of execution of the award which was subsequently modified and the interim stay was confined to only 50% of the backwages without any stay against reinstatement.

5. At the final hearing of the petition today, the learned counsel for the petitioner-Corporation submitted

that the respondent had admittedly not issued the receipt even after taking the amount of Rs.1,000 from the marriage party. The Labour Court, therefore, erred in holding that the charge of dishonesty was not proved. In the alternative, the learned counsel submitted that in any view of the matter the Labour Court ought to have held that the respondent was guilty of negligence by allowing 51 additional passengers to board the bus even though the truck had broken down before leaving Bhavnagar and that in any view of the matter the respondent could have issued receipt for Rs.1,000 with the necessary endorsement that the amount of Rs.600 was yet to be paid by the marriage party. The learned counsel also placed reliance on the decisions of this Court in 1982 (2) GLH 1057, 1993(1) GLR \_\_\_, 1998 Labour and Service 1194. The learned counsel also submitted that in view of 35 instances of past misconduct, the disciplinary authority was justified in imposing the penalty of dismissal.

6. On the other hand, Mr K.K.Shah, learned counsel for the respondent-conductor submitted that the Labour Court has appreciated the entire evidence on record and has given a finding of fact that the respondent had not committed any dishonest act but, on the contrary, the respondent had adopted a more practical and pragmatic approach which was also permissible under the Rules of the petitioner-corporation of allowing the additional passengers to board the bus when another vehicle of the marriage party had broken down and all the persons from the broken down vehicle were required to be carried in the bus which was a humane approach. The learned counsel pointed out from the evidence that the persons in the marriage party travelling in the bus and in the truck from which the passengers were allowed to board the bus had stated that they had only Rs.1,000 and that the members of the marriage party who had gone in the car had money with them and therefore the balance amount of Rs.600 would be paid subsequently. Since the respondent had already prepared the receipt of Rs.1,600, he was not in a position to issue the receipt without getting the balance amount of Rs.600 and, therefore, there was no question of even any attempt to misappropriate the Corporation's funds. The respondent had deposited the amount of Rs.1600 after returning to Bhavnagar on 20.2.1984 and therefore there was no question of even any allegation of misappropriation. It is further contended by the learned counsel for the respondent that when the Labour Court has given the finding of fact that the respondent had not committed any dishonest act, it was not required to look into acts of past misconduct which were trivial and that this Court would not interfere with

the award of the Labour Court in exercise of jurisdiction under Article 227 of the Constitution.

The learned counsel for the respondent further submitted that once the Labour Court found that the misconduct alleged against the respondent was not proved and the order of dismissal was required to be set aside, the Labour Court was justified in passing the order of reinstatement with continuity of service and full back wages.

7. Having heard the learned counsel for the parties it appears to the Court that in the facts and circumstances of the case and in view of the material on record it is not possible to interfere with the finding of fact given by the Labour Court that the petitioner had not committed any act of dishonesty or misappropriation of the public funds. At the same time, it cannot be gainsaid that there was negligence on the part of the respondent in permitting the persons of the marriage party to board the bus when the bus was within Bhavnagar limits when the truck in question had broken down and that, therefore, even the authorities of the ST Corporation at Bhavnagar could have been informed, and in preparing the receipt of Rs.1,600 when the respondent had received only Rs.1,000 from the marriage party. As stated above, since marriage party members had given Rs.1,000 to the respondent, the respondent could have given the receipt for Rs.1,000 with the endorsement that the balance amount was required to be paid. Hence, it can certainly be said that the respondent was negligent in discharging his duties.

8. In the above view of the matter, the Labour Court ought not to have passed the award for full back wages though the award for reinstatement with continuity of service cannot be faulted with. The judgements cited by the learned counsel for the Corporation are not applicable in the facts and circumstances of the case as the finding is that the petitioner was not guilty of any act of dishonesty or misappropriation. Hence, the petitioner's reinstatement with continuity of service in the original post of conductor is not required to be interfered with but the award passed by the Labour Court awarding full back wages is required to be modified by directing that the petitioner-corporation shall pay respondent 75% of the back wages.

9. Accordingly, the petition is partly allowed and the impugned award of the Labour Court is modified only in respect of back wages in the following terms and

directions:-

- (a) Petitioner - Gujarat State Road Transport Corporation shall pay the respondent back wages for the period from 1.6.1985 till the date of reinstatement i.e. 4.12.1988 at the rate of 75% of the salary and allowances and the amount of arrears will be calculated on the basis that the petitioner was in continuous service for all purposes including seniority and pay fixation and also for the purpose of revision of salary, as per the new pay scales.

Any amount which the petitioner-Corporation has paid to the respondent-employee towards backwages shall be adjusted against the amount to be paid and the balance amount shall be paid within three months from today.

- (b) In view of the grievance being made out by the learned counsel for the respondent - employee that the petitioner Corporation has not fixed pay of the respondent even for the period after the date of reinstatement, it is directed that the petitioner shall fix the respondent's pay for the period after 4.12.1988 on the basis that the petitioner was in continuous service from 31.5.1985 onwards and the amount of arrears of difference of salary shall also be paid to the respondent within three months from today.

- (c) If the amounts are not paid by the petitioner-Corporation to the respondent within the abovesaid time limit, unpaid amounts shall carry interest at the rate of 12% from today.

10. Rule is made absolute to the aforesaid extent with no order as to costs throughout.

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